

WORKGROUP #3

Committee on Improving Judicial Oversight and Processing of Probate Court Matters

May 5, 2011

V5.0

Proposed Amendments to the *Rules of Probate Procedure*

RULE 10.1: PRUDENT MANAGEMENT OF COSTS

A. IN A PROCEEDING BROUGHT PURSUANT TO TITLE 14:

1. THE FIDUCIARY MUST PRUDENTLY MANAGE COSTS, PRESERVE THE ASSETS OF THE WARD OR PROTECTED PERSON FOR THE BENEFIT OF THE WARD OR PROTECTED PERSON, AND PROTECT AGAINST INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A GOVERNING INSTRUMENT OR COURT ORDER.
2. THE GUARDIAN AD LITEM, FIDUCIARY, FIDUCIARY'S ATTORNEY, ATTORNEY FOR THE WARD OR PROTECTED PERSON MUST TIMELY DISCLOSE TO THE COURT AND ALL PERSONS ENTITLED TO NOTICE IF THE PERSON HAS A REASONABLE BELIEF THAT PROJECTED COSTS OF COMPLYING WITH A COURT ORDER MAY EXCEED THE PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST. IF APPROPRIATE, CONSISTENT WITH DUE PROCESS, THE COURT SHALL ENTER OR MODIFY THE ORDERS AS MAY PROTECT OR FURTHER THE BEST INTEREST OF THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST AGAINST PROJECTED COSTS THAT EXCEED PROBABLE BENEFITS.
3. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT APPOINTMENT OF A FIDUCIARY OR ATTORNEY, A HEARING ON A BUDGET OBJECTION AND A REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY. AT ANY STAGE OF THE PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR GOODS OR SERVICES BE OBTAINED.

Rule 18. Motions

- A. Generally. A motion shall be filed with the court when a party seeks procedural rather than substantive relief.
- B. Motions for Appointment of Guardian Ad Litem or Counsel. A party requesting the appointment of a guardian ad litem or counsel shall make such request in a motion that sets forth why the appointment is necessary or

advisable and what, if any, special expertise is required of the guardian ad litem or counsel.

C. IF A PARTY HAS A GOOD FAITH BELIEF THAT AN INTERESTED PERSON HAS FILED A MOTION OR PETITION THAT REQUESTS THE SAME OR SUBSTANTIALLY SIMILAR RELIEF TO THE RELIEF REQUESTED IN AN EARLIER MOTION OR PETITION FILED BY THE SAME INTERESTED PERSON WITHIN THE PRECEDING TWELVE MONTHS, AND IF THE LATER FILED MOTION OR PETITION DOES NOT DESCRIBE IN DETAIL A CHANGE IN FACT OR CIRCUMSTANCE THAT SUPPORTS THE REQUESTED RELIEF, THE PARTY MAY FILE A NOTICE OF REPETITIVE FILING. THIS NOTICE SHALL BE FILED NO LATER THAN THE RESPONSE OR OBJECTION DEADLINE FOR THE ALLEGEDLY REPETITIVE FILING AND SHALL INCLUDE THE TITLE AND DATE OF THE ALLEGED REPETITIVE FILING, THE TITLE AND DATE OF THE EARLIER FILING, AND THE DATE OF THE COURT'S RULING ON THE EARLIER FILING. A NOTICE OF REPETITIVE FILING SHALL HAVE THE EFFECT OF STAYING THE DEADLINE TO RESPOND OR OBJECT TO THE ALLEGED REPETITIVE FILING UNTIL FURTHER ORDER OF THE COURT. THE COURT MAY SUMMARILY STRIKE A REPETITIVE MOTION, WITHOUT HEARING, ON ITS OWN INITIATIVE OR FOLLOWING RECEIPT OF A NOTICE OF REPETITIVE FILING.

COMMENT TO RULE 18(C): ARIZONA REVISED STATUTES SECTION 14-1109 PERMITS THE COURT TO SUMMARILY DENY A REPETITIVE MOTION OR PETITION, AS DESCRIBED IN THE STATUTE. RULE 18(C) PROVIDES A COST-EFFECTIVE MECHANISM FOR A PARTY TO INFORM THE COURT OF A GOOD FAITH BELIEF THAT A MOTION OR PETITION IS REPETITIVE WITHOUT WAIVING THE RIGHT TO FILE A RESPONSE OR OBJECTION SHOULD THE COURT ULTIMATELY DETERMINE THAT THE MOTION OR PETITION IS NOT REPETITIVE. NOTHING IN THIS RULE IS INTENDED TO PRECLUDE THE COURT FROM *SUA SPONTE* SUMMARILY DENYING A REPETITIVE MOTION OR PETITION.

Rule 19. Appointment of Attorney, Medical Professional, and Investigator

A. A request for the appointment of an attorney, medical professional, and investigator may be included in the petition for the appointment of a guardian or conservator and need not be made by separate motion. A separate form of order for the appointment of an attorney, a medical professional, and an investigator shall be submitted to the court within three days after the request is made.

B. ABSENT GOOD CAUSE, A PARTY WHO SEEKS THE APPOINTMENT OF A GUARDIAN OR CONSERVATOR SHALL NOT NOMINATE A SPECIFIC ATTORNEY TO REPRESENT THE SUBJECT PERSON UNLESS THE ATTORNEY HAS AN EXISTING OR PRIOR ATTORNEY-CLIENT RELATIONSHIP WITH THE SUBJECT PERSON. If a party ~~who seeks the appointment of a guardian or conservator~~

nominates a specific attorney to represent the **SUBJECT PERSON** ~~alleged incapacitated person or the person alleged to be in need of protection~~, the party shall, in the petition for appointment of guardian or conservator, describe the attorney's prior relationship, if any, with the petitioner and the **SUBJECT PERSON** ~~alleged incapacitated person or the person alleged to be in need of protection~~.

C. UNLESS OTHERWISE ORDERED BY THE COURT, AN ATTORNEY SHALL NOT BE APPOINTED, ACCEPT AN APPOINTMENT, OR REMAIN APPOINTED AS THE ATTORNEY OR GUARDIAN AD LITEM FOR THE SUBJECT PERSON IF THE ATTORNEY HAS AN EXISTING ATTORNEY-CLIENT RELATIONSHIP WITH THE NOMINATED OR APPOINTED FIDUCIARY.

~~D. C.~~ If a party who seeks the appointment of a guardian or conservator nominates a specific medical professional to evaluate the alleged incapacitated person or the person alleged to be in need of protection, the party shall, in the petition for appointment of guardian or conservator, describe the medical professional's prior relationship, if any, with the petitioner and the alleged incapacitated person or the person alleged to be in need of protection.

E. D. Noncompliance with this rule may be cause for continuing the hearing on the petition for appointment of guardian or conservator to such time as the judicial officer directs.

RULE 26.1: WRITTEN FINDINGS ON APPOINTMENT

FOLLOWING A REQUEST BY A PERSON WITH HIGHER PRIORITY FOR APPOINTMENT AS A GUARDIAN OR CONSERVATOR BUT WHO WAS PASSED OVER BY THE COURT IN FAVOR OF APPOINTING A PERSON WITH LOWER PRIORITY, THE COURT SHALL MAKE A SPECIFIC FINDING REGARDING THE COURT'S DETERMINATION OF GOOD CAUSE AND WHY THE PERSON WAS NOT APPOINTED. THE REQUEST MUST BE MADE IN WRITING WITHIN TEN DAYS AFTER THE ENTRY OF THE ORDER.

Rule 28. Pretrial Procedures

A. Initial Procedures; Scheduling Conference.

1. If a matter is contested, unless the parties agree otherwise, the court shall set a scheduling conference that shall occur promptly after the date of the initial hearing on the petition. The scheduling conference may be held at the time set for the initial hearing on the petition. At the scheduling conference, the court and the parties shall address the following issues:

- a. the deadline for filing a written objection if one has not already been filed;
- b. the deadline for filing a joint alternative dispute resolution statement pursuant to Rule ~~29 16(g), Arizona Rules of Civil Procedure~~;
- c. any other issues the court or the parties deem relevant.

2. Unless inconsistent with these rules, Rule 16(b), Arizona Rules of Civil Procedure, shall apply to all pre-trial conferences.

3. Following the scheduling conference, the court shall enter an order setting forth the deadlines determined at the scheduling conference.

B. Discovery and Disclosure. Unless inconsistent with these rules, Rules 26 through 37(f), Arizona Rules of Civil Procedure, shall apply to discovery and disclosure in contested probate proceedings.

C. Procedure for Evidentiary Hearing. Except as otherwise provided in A.R.S. Title 14 or these rules, Rules 38 and 39 through 53, Arizona Rules of Civil Procedure, shall apply to evidentiary hearings in probate proceedings. Rule 38.1, Arizona Rules of Civil Procedure, shall not apply to contested probate proceedings unless otherwise ordered by the court.

Rule 29. ~~Arbitration~~ ALTERNATIVE DISPUTE RESOLUTION

~~Unless the parties to a contested matter agree otherwise, Rules 72 through 76, Arizona Rules of Civil Procedure, pertaining to compulsory arbitration, shall not apply.~~

A. THE PARTIES TO A CONTESTED MATTER ARE NOT SUBJECT TO COMPULSORY ARBITRATION AS SET FORTH IN RULES 72 THROUGH 77, ARIZONA RULES OF CIVIL PROCEDURE. THE COURT IS AUTHORIZED BY ARIZONA REVISED STATUTES SECTION 14-1108, HOWEVER, TO ORDER ALTERNATIVE DISPUTE RESOLUTION, INCLUDING ARBITRATION. IF THE COURT ORDERS ARBITRATION, THE ARBITRATION SHALL BE GOVERNED BY RULES 73 THROUGH 77.

B. UPON MOTION OF ANY PARTY OR UPON ITS OWN INITIATIVE, THE COURT MAY DIRECT THE PARTIES TO PARTICIPATE IN ONE OR MORE ALTERNATIVE DISPUTE RESOLUTION PROCESSES, INCLUDING BUT NOT LIMITED TO ARBITRATION, MEDIATION, SETTLEMENT CONFERENCE, OPEN NEGOTIATION, OR A PRIVATE DISPUTE RESOLUTION PROCESS AGREED UPON BY THE PARTIES.

C. NO LATER THAN THIRTY (30) DAYS AFTER A PROBATE PROCEEDING BECOMES CONTESTED AS DEFINED BY RULE 27, THE PARTIES SHALL CONFER, EITHER IN PERSON OR BY TELEPHONE, ABOUT:

1. THE POSSIBILITIES FOR A PROMPT SETTLEMENT OR RESOLUTION OF THE CASE; AND

2. WHETHER THE PARTIES MIGHT BENEFIT FROM PARTICIPATION IN SOME ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE TYPE OF PROCESS THAT WOULD BE MOST APPROPRIATE IN THEIR CASE, THE SELECTION OF AN ALTERNATIVE DISPUTE RESOLUTION SERVICE PROVIDER, AND THE SCHEDULING OF THE PROCEEDINGS.

D. THE PARTIES ARE RESPONSIBLE FOR ATTEMPTING IN GOOD FAITH TO AGREE ON AN ALTERNATIVE DISPUTE RESOLUTION PROCESS AND FOR REPORTING THE OUTCOME OF THEIR CONFERENCE TO THE COURT. WITHIN FIFTEEN (15) DAYS AFTER THEIR CONFERENCE, THE PARTIES SHALL INFORM THE COURT OF THE FOLLOWING:

1. IF THE PARTIES HAVE AGREED TO USE A SPECIFIC ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE TYPE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS TO BE USED, THE NAME AND ADDRESS OF THE ALTERNATIVE DISPUTE RESOLUTION SERVICE PROVIDER THEY WILL USE, AND THE DATE BY WHICH THE ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS ARE ANTICIPATED TO BE COMPLETED;

2. IF THE PARTIES HAVE NOT AGREED TO USE A SPECIFIC ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE POSITION OF EACH PARTY AS TO THE TYPE OF ALTERNATIVE DISPUTE RESOLUTION PROCESS APPROPRIATE FOR THE CASE OR, IN THE ALTERNATIVE, WHY ALTERNATIVE DISPUTE RESOLUTION IS NOT APPROPRIATE; AND

3. IF ANY PARTY REQUESTS THAT THE COURT CONDUCT A CONFERENCE TO CONSIDER ALTERNATIVE DISPUTE RESOLUTION.

E. DURING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS, THE PARTIES HAVE A DUTY TO PARTICIPATE IN GOOD FAITH.

Rule 29.2: REMEDIES FOR VEXATIOUS CONDUCT; DEFINITIONS

A. IF THE COURT FINDS THAT A PERSON ENGAGED IN VEXATIOUS CONDUCT IN CONNECTION WITH A PROBATE PROCEEDING, THE COURT MAY DO EITHER OR BOTH OF THE FOLLOWING:

1. ORDER THAT THE PERSON MUST OBTAIN THE COURT'S PERMISSION TO FILE FUTURE PLEADINGS AND OTHER PAPERS IN THE PROBATE PROCEEDING OR IN OTHER MATTERS. IF THE COURT ENTERS SUCH AN ORDER, NO PARTY IS REQUIRED TO RESPOND TO THE PERSON'S FUTURE FILINGS UNTIL ORDERED BY THE COURT.

2. ORDER THAT A FIDUCIARY, FIDUCIARY'S ATTORNEY, COURT-APPOINTED ATTORNEY GUARDIAN AD LITEM, TRUSTEE OR PERSONAL REPRESENTATIVE DOES NOT HAVE TO RESPOND TO FUTURE REQUESTS FOR INFORMATION MADE BY THE PERSON RELATED TO THE PROBATE PROCEEDING, UNLESS REQUIRED BY SUBSEQUENT COURT ORDER.

B. THE REMEDIES PERMITTED PURSUANT TO THIS SECTION ARE IN ADDITION TO ANY OTHER CIVIL REMEDY OR ANY OTHER PROVISION OF LAW.

C. FOR THE PURPOSES OF THIS SECTION:

1. "COURT-APPOINTED ATTORNEY" MEANS AN ATTORNEY APPOINTED PURSUANT TO SECTION 14-5303, SUBSECTION C, SECTION 14-5310, SUBSECTION C, SECTION 14-5401.01, SUBSECTION C OR SECTION 14-5407, SUBSECTION B.

2. "FIDUCIARY" MEANS AN AGENT UNDER A DURABLE POWER OF ATTORNEY, AN AGENT UNDER A HEALTH CARE POWER OF ATTORNEY, A GUARDIAN, A CONSERVATOR, A PERSONAL REPRESENTATIVE, A TRUSTEE OR A GUARDIAN AD LITEM.

3. "VEXATIOUS CONDUCT" MEANS HABITUAL, REPETITIVE CONDUCT UNDERTAKEN SOLELY OR PRIMARILY TO HARASS OR MALICIOUSLY INJURE ANOTHER PARTY OR THAT PARTY'S REPRESENTATIVE, CAUSE UNREASONABLE DELAY IN PROCEEDINGS, CAUSE UNDUE HARM TO THE WARD OR PROTECTED PERSON, OR CAUSE UNNECESSARY EXPENSE. IT DOES NOT INCLUDE CONDUCT UNDERTAKEN IN GOOD FAITH.

Rule 30. Guardianships/Conservatorships-Specific Procedures

A. ~~Inventories~~ INVENTORY.

1. Unless otherwise ordered by the court, the conservator shall file the inventory of the protected person's estate, **AS REQUIRED BY A.R.S. SECTION 14-5418(A)**, within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued. The inventory shall list all property owned by the protected person as of the date the conservator's letters of conservator, whether temporary or permanent, were first issued, and shall provide the values of such assets as of the date of the conservator's first appointment.

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why

additional time is required and how much additional time is required to file the inventory.

3. If, after filing the inventory but before filing the conservator's first **ACCOUNT accounting**, the conservator discovers an additional asset or discovers that the value of an asset on the inventory, whether appraised or not, is erroneous or misleading, the conservator shall file an amended inventory. If the conservator files an amended inventory because the conservator has discovered an additional asset and if the additional asset is not already subject to a court-ordered restriction, the conservator shall, with the amended inventory, file a petition requesting the court to either increase the amount of the conservator's bond or enter an order restricting the sale, conveyance, or encumbrance of the additional asset.

4. Unless permitted by the court, after a conservator has filed the conservator's first **ACCOUNT accounting** with the court, the conservator shall not amend the inventory. If the conservator discovers any assets after the filing of the conservator's first **ACCOUNT accounting** or if the conservator discovers that the value of an asset listed on the inventory is erroneous or misleading, the conservator shall make the appropriate adjustments on the conservator's subsequent **ACCOUNTS accountings**.

B. **CONSERVATOR'S ACCOUNTS Accountings**.

1. Unless otherwise ordered by the court, the conservator's first **ACCOUNT accounting** shall reflect all activity relating to the conservatorship estate from the date the conservator's letters were first issued through and including the last day of the ninth month after the date the conservator's permanent letters were issued and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the **ACCOUNT accounting**, the conservator shall attach to the **ACCOUNT accounting** a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the **ACCOUNT accounting**.

2. Unless otherwise ordered by the court, all subsequent **ACCOUNTS accountings** shall reflect all activity relating to the conservatorship estate from the ending date of the most recent previously filed **ACCOUNT accounting** through and including the last date of the twelfth month thereafter, and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the **ACCOUNT accounting**, the conservator shall attach to the **ACCOUNT accounting** a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the **ACCOUNT accounting**.

3. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR'S ACCOUNT SHALL BE FILED IN A FORMAT AS SET FORTH IN FORM 5 TO THESE RULES.

~~4.3.~~ Unless otherwise ordered by the court and except as provided in A.R.S. § 14-5419(F), a conservator shall file a final ACCOUNT ~~accounting~~ for a deceased protected person within 90 days after the date of the protected person's death.

~~5.4.~~ If the conservator is unable to file an ACCOUNT ~~accounting~~ within the time set forth in this rule, the conservator shall, before the deadline, file a motion that requests additional time to file the ACCOUNT ~~accounting~~. The motion shall, at a minimum, state why additional time is required and how much additional time is required to file the ACCOUNT ~~accounting~~.

~~6.5.~~ For purposes of this rule, if the conservator's appointment initially was temporary, "the date the conservator's letters were first issued" shall mean the date the conservator's temporary letters were issued; otherwise, "the date the conservator's letters were first issued" shall mean the date the conservator's permanent letters were issued.

C. Annual Guardian Reports

1. Unless otherwise ordered by the court, the guardian's first annual report shall cover the time from the date the guardian's letters were first issued through and including the last day of the ninth month after the date the guardian's permanent letters were issued. The report shall be filed with the court on or before the anniversary date of the issuance of the guardian's permanent letters.

2. Unless otherwise ordered by the court, all subsequent annual reports of guardian shall cover the time from the ending date of the most recent previously filed annual report of guardian through and including the last date of the twelfth month thereafter. The report shall be filed with the court on or before the anniversary date of the issuance of the guardian's permanent letters.

3. If the guardian is unable to file an annual report of guardian within the time set forth in this rule, the guardian shall, before the deadline, file a motion that requests additional time to file the report. The motion shall state why additional time is required and how much additional time is required to file the report.

4. For purposes of this rule, if the guardian's appointment initially was temporary, "the date the guardian's letters were first issued" shall mean the date the guardian's temporary letters were issued; otherwise, "the date the guardian's letters were first issued" shall mean the date the guardian's permanent letters were issued.

RULE 30.1: GOOD FAITH ESTIMATE

A. A PETITION TO APPOINT A CONSERVATOR SHALL INCLUDE A GOOD FAITH ESTIMATE OF ALL PROJECTED MONTHLY COSTS THAT SHALL BE INCURRED BY A CONSERVATOR, EXCEPT MEDICAL COSTS AND TAXES, TO THE EXTENT THE INFORMATION CAN BE REASONABLY KNOWN OR PROJECTED AT THE TIME A PETITION IS FILED.

B. THE GOOD FAITH ESTIMATE SHALL INCLUDE:

1. THE AVERAGE MONTHLY COST OF HOUSING, FOOD AND CARE.
2. THE AVERAGE MONTHLY COST OF DISCRETIONARY EXPENDITURES.
3. THE AVERAGE MONTHLY FIDUCIARY FEES AND COSTS.
4. THE AMOUNT OF ATTORNEY FEES INCURRED OR PROJECTED TO BE INCURRED BY THE PROTECTED PERSON'S ESTATE THROUGH THE ISSUANCE OF A COURT ORDER APPOINTING A CONSERVATOR.
5. THE AVERAGE MONTHLY ATTORNEY FEES AND EXPENSES EXPECTED TO BE INCURRED BY THE PROTECTED PERSON'S ESTATE UNTIL THE APPROVAL OF THE FIRST CONSERVATOR'S ACCOUNT.
6. THE PROJECTED COST TO PREPARE THE INVENTORY PURSUANT TO ARIZONA REVISED STATUTES SECTION 14-5418.
7. THE AVERAGE MONTHLY COSTS OF ALL OTHER MISCELLANEOUS COSTS OR EXPENSES NOT OTHERWISE LISTED IN THE GOOD FAITH ESTIMATE, EXCLUDING MEDICAL COSTS AND TAXES, TOGETHER WITH AN EXPLANATION OF THE REQUESTED COST OR EXPENSE.

C. IF THE PETITIONER IS UNABLE TO PROVIDE ALL OR PART OF THE GOOD FAITH ESTIMATE AT THE TIME THE PETITION IS FILED, THE PETITIONER MUST STATE IN THE PETITION ALL EFFORTS MADE BY THE PETITIONER TO OBTAIN THE ESTIMATES, AND THE PETITIONER SHALL UPDATE THE GOOD FAITH ESTIMATE FIVE DAYS BEFORE THE HEARING ON THE PETITION IF FURTHER INFORMATION BECOMES KNOWN.

D. "HOUSING, FOOD AND CARE" MEANS ALL GOODS AND SERVICES PROVIDED TO A PROTECTED PERSON THAT ARE ESSENTIAL FOR SURVIVAL, SUCH AS HOUSING, FEES TO A CARE FACILITY, NECESSARY COMPANIONS OR CARE PROVIDERS, FOOD, CLOTHING, TOILETRIES AND HYGIENIC SUPPLIES, UTILITIES, AND REQUIRED HOUSEHOLD EXPENSES (INCLUDING HOME MORTGAGE PAYMENTS), BUT NOT MEDICAL COSTS, TAXES OR DISCRETIONARY CARE.

E. "DISCRETIONARY EXPENDITURES" MEANS ALL GOODS AND SERVICES PROVIDED TO A PROTECTED PERSON THAT ARE NOT ESSENTIAL FOR SURVIVAL BUT ARE DESIGNED TO IMPROVE OR PROLONG THE QUALITY AND ENJOYMENT OF LIFE FOR THE PROTECTED PERSON. DISCRETIONARY CARE DOES NOT INCLUDE MEDICAL COSTS OR TAXES.

RULE 30.2: FINANCIAL ORDER

A. FOLLOWING THE APPOINTMENT OF A CONSERVATOR, A CONSERVATOR SHALL INSTITUTE AND FOLLOW A BUDGET, AS SET FORTH IN RULE 30.4, UNLESS OTHERWISE ORDERED BY THE COURT, AND THE COURT MAY ENTER ONE OR MORE OF THE FOLLOWING ORDERS:

1. LIMIT EXPENDITURES FROM THE ESTATE OF THE PROTECTED PERSON AS THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST; OR,
2. REQUIRE THE CONSERVATOR TO PROCEED IN ANY OTHER LAWFUL MANNER THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST.

B. AFTER A CONSERVATOR IS APPOINTED, THE COURT MAY DISCHARGE THE PROTECTED PERSON'S ATTORNEY IF THE COURT FINDS THAT THE COST OF THE CONTINUED REPRESENTATION EXCEEDS THE PROBABLE BENEFIT TO THE PROTECTED PERSON. UNTIL DISCHARGED, THE PROTECTED PERSON'S ATTORNEY HAS A CONTINUING DUTY TO REVIEW THE CONSERVATOR'S INVENTORY, BUDGETS AND ACCOUNTS AND TO NOTIFY THE COURT OF ANY OBJECTIONS OR CONCERNS THE ATTORNEY IDENTIFIES WITH RESPECT TO THE CONSERVATOR'S INVENTORY, BUDGETS AND ACCOUNTS.

RULE 30.3: SUSTAINABILITY OF CONSERVATORSHIP

A. THE CONSERVATOR SHALL DISCLOSE WHETHER THE ANNUAL EXPENSES OF THE CONSERVATORSHIP EXCEED INCOME AND, IF SO, WHETHER THE ASSETS AVAILABLE TO THE CONSERVATOR LESS LIABILITIES ARE SUFFICIENT TO SUSTAIN THE CONSERVATORSHIP DURING THE PROJECTED LIFESPAN OF THE PROTECTED PERSON. IF THE ASSETS ARE NOT SUFFICIENT, THE CONSERVATOR SHALL ALSO DISCLOSE THE MANAGEMENT PLAN FOR THE NON-SUSTAINABLE CONSERVATORSHIP. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL DISCLOSE THE INFORMATION REQUIRED BY THIS RULE, INCLUDING THE CONSERVATOR'S ASSUMPTIONS AND CALCULATION, WHEN FILING AN INVENTORY, ANY CONSERVATOR'S ACCOUNT, AND FOLLOWING ANY MATERIAL CHANGE OF CIRCUMSTANCES.

B. THE INFORMATION REQUIRED BY THIS RULE SHALL BE A GOOD FAITH PROJECTION BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO THE CONSERVATOR CONCERNING THE SUBJECT PERSON. THIS INFORMATION MAY BE CONSIDERED BY THE COURT WHEN ENTERING ORDERS IN THE PROBATE PROCEEDING.

C. THE CONSERVATORSHIP IS DEEMED SUSTAINABLE IF THE FOLLOWING EQUATION IS PROJECTED TO BE TRUE:

$$\frac{(\text{AVAILABLE ASSETS MINUS LIABILITIES OF THE ESTATE})}{(\text{ANNUAL EXPENDITURES MINUS ANNUAL INCOME})} \geq \text{PROJECTED LIFESPAN}$$

EXAMPLE: ASSUME A PROTECTED ESTATE CONSISTS OF \$20,000 IN BANK ACCOUNTS, A RESIDENCE THAT CAN REALISTICALLY BE SOLD FOR \$120,000 BUT HAS A LOAN BALANCE OF \$65,000, AND ANNUAL EXPENSES OF \$45,000, WHICH INCLUDES THE FEES TO THE FIDUCIARY AND ATTORNEYS, BUT ANNUAL INCOME IS ONLY \$20,000. THE EQUATION IS SOLVED AS FOLLOWS:

$$\frac{((120,000 + 20,000) - 65,000)}{(45,000 - 20,000)} \geq \text{PROJECTED LIFESPAN}$$

$$\frac{(75,000)}{(25,000)} \geq \text{PROJECTED LIFESPAN}$$

$$3 \text{ YEARS UNTIL ASSETS ARE DEPLETED} \geq \text{PROJECTED LIFESPAN}$$

IN THIS EXAMPLE, IF THE CONSERVATOR ESTIMATES A PROJECTED LIFESPAN OF MORE THAN THREE YEARS, THE CONSERVATORSHIP IS UNSUSTAINABLE AND AN ALTERNATIVE OBJECTIVE MUST BE DISCLOSED. IF THE PROJECTED LIFESPAN IS THREE YEARS OR LESS, THE CONSERVATORSHIP IS SUSTAINABLE BUT STILL SUBJECT TO PRUDENT MANAGEMENT OF COSTS.

RULE 30.4: CONSERVATORSHIP BUDGET

A. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL FILE A BUDGET NOT LATER THAN THE DATE THE INVENTORY IS DUE AND WITH THE CONSERVATOR'S ACCOUNT THEREAFTER, FOLLOWING CONSULTATION WITH ANY ATTORNEY OR GUARDIAN AD LITEM FOR THE PROTECTED PERSON. THE FIRST BUDGET SHALL COVER THE DATE OF THE CONSERVATOR'S INITIAL APPOINTMENT THROUGH AND INCLUDING THE END DATE OF THE CONSERVATOR'S FIRST ACCOUNT.

B. THE BUDGET REQUIRED BY THIS SECTION MUST BE FILED IN A FORMAT AS SET FORTH IN FORM 5 TO THESE RULES.

C. THE CONSERVATOR MUST PROVIDE A COPY OF THE BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE CONSERVATOR'S ACCOUNTS PURSUANT TO ARIZONA REVISED STATUTES SECTION 14-5419(C).

D. THE CONSERVATOR SHALL FILE AN AMENDMENT TO THE BUDGET AND PROVIDE NOTICE IN THE SAME MANNER AS THE INITIAL BUDGET WITHIN THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY MORE THAN TEN PER CENT OR TWO THOUSAND DOLLARS, WHICHEVER IS GREATER, UNLESS A DIFFERENT THRESHOLD FOR AMENDMENT IS PRESCRIBED BY THE COURT.

E. AN INTERESTED PERSON MAY FILE A WRITTEN OBJECTION TO THE BUDGET OR AMENDMENT WITHIN FOURTEEN DAYS AFTER THE FILING DATE OF THE BUDGET OR AMENDMENT. ON THE FILING OF A WRITTEN OBJECTION, THE COURT MAY OVERRULE ALL OR PART OF THE OBJECTION, ORDER A REPLY BY THE CONSERVATOR OR SET A HEARING ON THE OBJECTION. THE COURT MAY ALSO SET A HEARING IN THE ABSENCE OF AN OBJECTION. AT A HEARING, THE CONSERVATOR HAS THE BURDEN TO PROVE THAT A CONTESTED BUDGET ITEM IS REASONABLE, NECESSARY AND IN THE BEST INTEREST OF THE PROTECTED PERSON.

F. THE COURT SHALL APPROVE, DISAPPROVE OR MODIFY THE BUDGET OR AMENDMENT TO SERVE THE PROTECTED PERSON'S BEST INTEREST. ALTERNATIVELY, THE COURT MAY ORDER THAT A BUDGET IS APPROVED IN THE ABSENCE OF AN OBJECTION.

Rule 33. Compensation for Fiduciaries and ~~Attorney's Fees~~ ATTORNEYS

A. A GUARDIAN, CONSERVATOR, ATTORNEY OR GUARDIAN AD LITEM WHO INTENDS TO BE COMPENSATED BY THE ESTATE OF A WARD OR PROTECTED PERSON, SHALL GIVE WRITTEN NOTICE OF THE BASIS OF ANY COMPENSATION AS REQUIRED BY ARIZONA REVISED STATUTES SECTION 14-5109.

~~B.A.~~ Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task

was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;

2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and

3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.

~~C.B.~~ Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court.

~~D.C.~~ If a petition for compensation or fees is contested, the objecting party shall set forth all specific objections in writing, and a copy of such written objections shall be given to or served on each party and person who has appeared or requested notice in the case. Proof of service or delivery of such notice shall be filed with the court.

~~E.D.~~ When an attorney or fiduciary fee statement accompanies an annual accounting, the fee statement shall match the charges reported in the annual accounting or a reconciliation of the fee statement to the accounting shall be provided by the fiduciary.

~~F.E.~~ WHEN DETERMINING REASONABLE COMPENSATION, The superior court SHALL FOLLOW THE STATEWIDE FEE GUIDELINES SET FORTH IN APPENDIX A TO THESE RULES ~~may adopt fee guidelines designating compensation rates that may be used in determining the reasonableness of fees payable to licensed fiduciaries in cases under A.R.S. Title 14.~~

~~G.F.~~ Unless ordered by the court, neither a personal representative nor a personal representative's attorney is required to file a petition for approval of such person's fees.

H. COMPENSATION PAYABLE TO ATTORNEYS OR GUARDIANS AD LITEM FROM A WARD'S OR PROTECTED PERSON'S ESTATE IS WAIVED IF NOT SUBMITTED IN COMPLIANCE WITH ARIZONA REVISED STATUTES, SECTION 14-5110.

PLACEHOLDER

FORM 5

STATEWIDE FEE GUIDELINES
For Assessing the Reasonableness
of
**FIDUCIARY, GUARDIAN *AD LITEM*,
AND ATTORNEY COMPENSATION**
In Title 14 Proceedings

INTRODUCTION:

THESE GUIDELINES ARE INTENDED TO ASSIST THE COURT, FIDUCIARIES, GUARDIANS *AD LITEM*, ATTORNEYS, PARTIES, AND INTERESTED PERSONS IN EVALUATING WHETHER COMPENSATION IS REASONABLE, SINCE PROFESSIONAL SERVICES MUST BE TAILORED TO THE SPECIFIC CIRCUMSTANCES OF EACH ENGAGEMENT, AND A ONE-SIZE-FITS-ALL REGULATORY APPROACH TO PROFESSIONAL SERVICES AND COMPENSATION IS NOT PRACTICAL AND NOT IN THE BEST INTEREST OF EACH UNIQUE WARD, PROTECTED PERSON, ESTATE, AND TRUST. ALTHOUGH SUCH REGULATORY APPROACHES HAVE THE ATTRACTION OF APPARENT SIMPLICITY, THE RESULT CAN BE INCREASED ADMINISTRATIVE COSTS, DIMINISHED QUALITY OF PROFESSIONAL SERVICES, OR UNDERSERVED POPULATIONS, SUCH THAT REASONABLE COMPENSATION IS BEST DETERMINED ON A CASE-BY-CASE BASIS, WHILE APPLYING CONSISTENT COMPENSATION GUIDELINES.

SINCE EVERY CASE IS DIFFERENT, HOWEVER, AND BECAUSE EVERY FIDUCIARY, GUARDIAN *AD LITEM*, AND ATTORNEY HAS UNIQUE QUALIFICATIONS, THESE FEE GUIDELINES SET FORTH COMPULSORY BILLING STANDARDS, POINTS OF REFERENCE, AND GENERAL COMPENSATION FACTORS, BUT NOT PREDETERMINED TIMES TO PERFORM SPECIFIC TASKS, PREDETERMINED RATE SCHEDULES, OR FEES AS A PERCENT OF AN ESTATE. THEREFORE, FOLLOWING COMPLIANCE WITH COMPULSORY BILLING STANDARDS, THE COURT SHALL WEIGH THE TOTALITY OF THE CIRCUMSTANCES AND, IN ITS DISCRETION, ASSIGN MORE OR LESS WEIGHT TO ANY GIVEN POINTS OF REFERENCE OR COMPENSATION FACTORS AS IT DEEMS JUST AND REASONABLE.

SCOPE:

THESE GUIDELINES ONLY APPLY TO THE COMPENSATION OF COURT-APPOINTED FIDUCIARIES, SPECIFICALLY GUARDIANS, CONSERVATORS, AND PERSONAL REPRESENTATIVES, LICENSED AND UNLICENSED, AS WELL AS GUARDIANS *AD LITEM* AND ATTORNEYS WHO ARE PAID BY A WARD, PROTECTED PERSON, ESTATE, OR TRUST (COLLECTIVELY REFERRED TO IN THE *GUIDELINES* AS AN “ESTATE”), BUT SHALL NOT APPLY TO COMPENSATION PAID BY A TRUST OR DECEDENT’S ESTATE, IF COMPENSATION IS SPECIFIED OR SET FORTH IN THE RELEVANT TRUST OR TESTAMENTARY INSTRUMENT. THESE FEE GUIDELINES DO NOT APPLY WHEN THE FEES ARE NOT PAID BY THE ESTATE, SUCH AS COURT-APPOINTED COUNSEL WHO ARE PAID BY THE COURT.

GUIDELINES:

1. REASONABLE COMPENSATION. FIDUCIARIES, GUARDIANS *AD LITEM*, AND ATTORNEYS (COLLECTIVELY REFERRED TO IN THE *GUIDELINES* AS A “PROFESSIONAL”) ARE ENTITLED TO REASONABLE COMPENSATION FOR THE SERVICES THEY RENDER IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE, WHICH RESULTS IN COMPENSATION THAT IS FAIR, PROPER, JUST, MODERATE, SUITABLE UNDER THE CIRCUMSTANCES, FIT, APPROPRIATE TO THE END IN VIEW, AND TIMELY PAID, CONSISTENT WITH THE FOLLOWING GUIDELINES. THE RIGHT TO RECEIVE COMPENSATION MAY BE LIMITED BY APPLICABLE STATUTES.
2. COMPULSORY BILLING STANDARDS. UNLESS OTHERWISE ORDERED BY THE COURT, COMPENSATION AND REIMBURSEMENT SHALL MEET THE FOLLOWING STANDARDS:
 - A. ALL FEE PETITIONS SHALL COMPLY WITH RULE 33 OF THE *ARIZONA RULES OF PROBATE PROCEDURE*.
 - B. ALL HOURLY BILLING SHALL BE IN AN INCREMENT TO THE NEAREST 1/10 OF AN HOUR, WITH NO MINIMUM BILLING UNIT IN EXCESS OF 1/10 OF AN HOUR. NO “VALUE BILLING” FOR SERVICES RENDERED IS PERMITTED, RATHER THAN THE ACTUAL TIME EXPENDED.
 - C. “BLOCK BILLING” IS NOT PERMITTED; BLOCK BILLING OCCURS WHEN A TIMEKEEPER PROVIDES ONLY A TOTAL AMOUNT OF TIME SPENT WORKING ON MULTIPLE TASKS, RATHER THAN AN ITEMIZATION OF THE TIME EXPENDED ON A SPECIFIC TASK.
 - D. NECESSARY TRAVEL TIME AND WAITING TIME MAY BE BILLED AT 100% OF THE NORMAL HOURLY RATE, EXCEPT FOR TIME SPENT ON OTHER BILLABLE ACTIVITY, AND IN-STATE MILEAGE IS NOT REIMBURSED; TRAVEL

TIME AND WAITING TIME ARE NOT NECESSARY WHEN THE SERVICE CAN BE MORE EFFICIENTLY RENDERED BY CORRESPONDENCE OR ELECTRONIC COMMUNICATION, E.G. TELEPHONIC COURT HEARINGS.

- E. BILLABLE TIME THAT BENEFITS MULTIPLE CLIENTS, INCLUDING TRAVEL AND WAITING TIME, SHALL BE APPROPRIATELY APPORTIONED BETWEEN EACH CLIENT.
- F. BILLABLE TIME DOES NOT INCLUDE TIME SPENT ON BILLING OR ACCOUNTS RECEIVABLE ACTIVITIES, INCLUDING TIME SPENT PREPARING ITEMIZED STATEMENTS OF WORK PERFORMED, COPYING, OR DISTRIBUTING STATEMENTS; HOWEVER, TIME SPENT DRAFTING THE ADDITIONAL DOCUMENTS THAT ARE REQUIRED BY COURT ORDER, RULE, OR STATUTE, INCLUDING ANY RELATED HEARING, IS BILLABLE TIME. THE COURT SHALL DETERMINE THE REASONABLE COMPENSATION, IF ANY, IN ITS SOLE DISCRETION, CONCERNING ANY CONTESTED LITIGATION OVER FEES OR COSTS.
- G. BILLABLE TIME DOES NOT INCLUDE INTERNAL BUSINESS ACTIVITIES OF THE PROFESSIONAL, INCLUDING CLERICAL OR SECRETARIAL SUPPORT TO THE PROFESSIONAL.
- H. THE HOURLY RATE CHARGED FOR ANY GIVEN TASK SHALL BE AT THE AUTHORIZED RATE, COMMENSURATE WITH THE TASK PERFORMED, REGARDLESS OF WHO ACTUALLY PERFORMED THE WORK, BUT CLERICAL AND SECRETARIAL ACTIVITIES ARE NOT SEPARATELY BILLABLE FROM THE PROFESSIONAL.

EXAMPLE: AN ATTORNEY CAN ONLY BILL AN ATTORNEY RATE WHEN PERFORMING SERVICES THAT REQUIRE AN ATTORNEY, BUT A PARALEGAL RATE WHEN PERFORMING PARALEGAL SERVICES, A FIDUCIARY RATE WHEN PERFORMING FIDUCIARY SERVICES, NO CHARGE WHEN PERFORMING SECRETARIAL OR CLERICAL SERVICES, ETC.

EXAMPLE: A FIDUCIARY CAN ONLY BILL A FIDUCIARY RATE WHEN PERFORMING SERVICES THAT REQUIRE THE SKILL LEVEL OF THE FIDUCIARY, BUT A COMPANION RATE WHEN PERFORMING COMPANION SERVICES, A BOOKKEEPER RATE WHEN PERFORMING BOOKKEEPING AND BILL-PAYING SERVICES FOR A CLIENT, NO CHARGE WHEN PERFORMING SECRETARIAL OR CLERICAL SERVICES, ETC.

- I. REASONABLE COSTS THAT ARE INCURRED IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE ARE REIMBURSABLE AT ACTUAL COST, WITHOUT "MARK-UP". EXAMPLES OF REIMBURSABLE COSTS INCLUDE, BUT ARE NOT LIMITED TO: GOODS OR SERVICES OBTAINED FOR OR

CONSUMED BY THE ESTATE; POSTAGE AND SHIPPING FEES; DEPOSITION AND TRANSCRIPT COSTS; FEES CHARGED BY A PROCESS SERVER; PUBLICATION FEES; EXPERT WITNESS FEES; MESSENGER COSTS; CASE-SPECIFIC BONDS; AND ELECTRONIC DATABASE FEES CHARGED BY AN OUTSIDE VENDOR (E.G., WESTLAW, LEXISNEXIS, PACER, ETC.) EXCEPT FOR CHARGES TO RESEARCH ARIZONA STATUTES, CASE LAW, AND REGULATIONS. REIMBURSABLE COSTS DO NOT INCLUDE ANY COST NOT SPECIFICALLY OR DIRECTLY ASSOCIATED WITH THE DELIVERY OF GOODS OR SERVICES TO AN IDENTIFIED ESTATE, I.E. OVERHEAD.

- J. TIME AND EXPENSES FOR ANY MISFEASANCE OR MALFEASANCE ARE NOT COMPENSABLE.
 - K. TIME AND EXPENSES TO CORRECT OR MITIGATE ERRORS CAUSED BY THE PROFESSIONAL, OR THEIR STAFF, ARE NOT BILLABLE TO THE ESTATE.
 - L. TIME OR EXPENSES TO RESPOND OR DEFEND AGAINST A REGULATORY COMPLAINT AGAINST THE PROFESSIONAL ARE NOT BILLABLE TO THE ESTATE.
 - M. A PROFESSIONAL MAY ONLY CHARGE INTEREST ON THEIR UNPAID COMPENSATION OR UNPAID REIMBURSEMENT WITH COURT APPROVAL.
3. POINTS OF REFERENCE. THE COURT SHALL CONSIDER POINTS OF REFERENCE WHEN CONSIDERING HOURLY RATES AND CHARGES, AS NON-BINDING BUT INFORMATIVE AND PERSUASIVE CONSIDERATIONS, INCLUDING:
- A. THE PREVAILING AVERAGE AND MEDIAN RATES CHARGED FOR COMPARABLE PROFESSIONAL SERVICES IN THE MARKETPLACE IN WHICH THE PROFESSIONAL PRACTICES, AS PERIODICALLY REPORTED BY THE ADMINISTRATIVE OFFICE OF THE COURTS. SEE EXHIBIT A.
 - B. TO THE EXTENT AUTHORIZED BY LAW, A NON-LICENSED FIDUCIARY WHO IS RELATED TO A PROTECTED PERSON, WARD, OR DECEDENT, MAY RECEIVE REASONABLE COMPENSATION FOR SERVICES AS A CONSERVATOR, GUARDIAN, OR PERSONAL REPRESENTATIVE, RESPECTIVELY, COMMENSURATE WITH THE SERVICES PERFORMED.
 - C. THE NUMBER OF BILLABLE HOURS AND SERVICES RENDERED IN COMPARABLE CASES BEFORE THAT JUDICIAL OFFICER.
 - D. AS ONLY A GENERAL BENCHMARK, THE COMMON FIDUCIARY SERVICES RENDERED IN A ROUTINE GUARDIANSHIP OR CONSERVATORSHIP ENGAGEMENT ARE AS FOLLOWS (THE FIDUCIARY SHOULD BE PREPARED

TO PROVIDE A REASONABLE EXPLANATION FOR EXCEEDING THESE BENCHMARKS, UPON REQUEST BY THE COURT):

- I. ROUTINE BOOKKEEPING, SUCH AS DISBURSEMENTS, BANK RECONCILIATION, DATA ENTRY OF INCOME AND EXPENDITURES, AND MAIL PROCESSING: FOUR (4) HOURS PER MONTH, AT A COMMENSURATE RATE FOR SUCH SERVICES.
 - II. ROUTINE SHOPPING: SIX (6) HOURS PER MONTH IF WARD IS AT HOME, AND TWO (2) HOUR PER MONTH IF WARD IN A FACILITY, AT A COMMENSURATE RATE FOR SUCH SERVICES.
 - III. ONE ROUTINE PERSONAL VISIT PER MONTH BY THE FIDUCIARY TO THE WARD OR PROTECTED PERSON.
 - IV. PREPARATION OF CONSERVATOR'S ACCOUNT AND BUDGET: FIVE (5) HOURS PER YEAR.
 - V. PREPARATION OF ANNUAL GUARDIANSHIP REPORT: TWO (2) HOURS PER YEAR.
 - VI. MARSHALLING OF ASSETS AND PREPARATION OF INITIAL INVENTORY: EIGHTY (80) HOURS.
- E. NOT MORE THAN ONE ATTORNEY MAY BILL FOR ATTENDING HEARINGS, DEPOSITIONS, AND OTHER COURT PROCEEDINGS ON BEHALF OF A CLIENT, NOR BILL FOR STAFF TO ATTEND, ABSENT GOOD CAUSE.
- F. EACH FIDUCIARY AND GUARDIAN *AD LITEM* SHALL NOT BILL FOR MORE THAN ONE PERSON TO ATTEND HEARINGS, DEPOSITIONS, AND OTHER COURT PROCEEDINGS ON BEHALF OF AN ESTATE, ABSENT GOOD CAUSE. THIS PROVISION DOES NOT PRECLUDE AN ATTORNEY, WHO REPRESENTS A FIDUCIARY OR GUARDIAN AD LITEM, FROM SUBMITTING A SEPARATE BILL.
- G. THE TOTAL AMOUNT OF ALL ANNUAL EXPENDITURES, INCLUDING REASONABLE PROFESSIONALS FEES, MAY NOT DEplete THE ESTATE DURING THE ANTICIPATED LIFESPAN OF THE WARD OR PROTECTED PERSON, UNTIL AND UNLESS THE CONSERVATOR HAS DISCLOSED THAT THE CONSERVATORSHIP HAS AN ALTERNATIVE OBJECTIVE, SUCH AS PLANNED TRANSITION TO PUBLIC ASSISTANCE OR ASSET RECOVERY, AS SET FORTH IN THE DISCLOSURE REQUIRED BY RULE OF PROBATE PROCEDURE 17.4.

4. COMPENSATION FACTORS. THE COURT SHALL CONSIDER THE FOLLOWING FACTORS, AS GENERAL PRINCIPLES, NOT RIGID RULES, WHEN DETERMINING WHAT CONSTITUTES REASONABLE COMPENSATION:
- A. THE REQUEST FOR COMPENSATION IN COMPARISON TO THE PREVIOUSLY DISCLOSED BASIS FOR FEES, ANY PRIOR ESTIMATE BY THE PROFESSIONAL, AND ANY COURT ORDER; [REFINE AFTER LEGISLATION IS ADOPTED]
 - B. THE EXPERTISE, TRAINING, EDUCATION, EXPERIENCE, AND SKILL OF THE PROFESSIONAL IN TITLE 14 PROCEEDINGS;
 - C. WHETHER AN APPOINTMENT IN A PARTICULAR MATTER PRECLUDED OTHER EMPLOYMENT;
 - D. THE CHARACTER OF THE WORK TO BE DONE, INCLUDING DIFFICULTY, INTRICACY, IMPORTANCE, NECESSITY, TIME, SKILL OR LICENSE REQUIRED, OR RESPONSIBILITY UNDERTAKEN;
 - E. THE CONDITIONS OR CIRCUMSTANCES OF THE WORK, INCLUDING EMERGENCY MATTERS (REQUIRING URGENT ATTENTION), SERVICES PROVIDED OUTSIDE REGULAR BUSINESS HOURS, POTENTIAL DANGER (E.G., HAZARDOUS MATERIALS, CONTAMINATED REAL PROPERTY, OR DANGEROUS PERSONS), OR OTHER EXTRAORDINARY CONDITIONS;
 - F. THE WORK ACTUALLY PERFORMED, INCLUDING THE TIME ACTUALLY EXPENDED, AND THE ATTENTION AND SKILL-LEVEL REQUIRED FOR EACH TASK, INCLUDING WHETHER A DIFFERENT PERSON COULD HAVE RENDERED BETTER, FASTER OR LESS EXPENSIVE SERVICE;
 - G. THE RESULT, SPECIFICALLY WHETHER BENEFITS WERE DERIVED FROM THE EFFORTS, AND WHETHER PROBABLE BENEFITS EXCEEDED COSTS;
 - H. WHETHER THE PROFESSIONAL TIMELY DISCLOSED THAT A PROJECTED COST WAS LIKELY TO EXCEED THE PROBABLE BENEFIT, AFFORDING THE COURT AN OPPORTUNITY TO MODIFY ITS ORDER IN FURTHERANCE OF THE BEST INTEREST OF THE ESTATE.
 - I. THE FEES CUSTOMARILY CHARGED AND TIME CUSTOMARILY EXPENDED FOR PERFORMING LIKE SERVICES IN THE COMMUNITY;
 - J. THE DEGREE OF FINANCIAL OR PROFESSIONAL RISK AND RESPONSIBILITY ASSUMED;
 - K. THE FIDELITY AND LOYALTY DISPLAYED BY THE PROFESSIONAL, INCLUDING WHETHER THE PROFESSIONAL PUT THE BEST INTEREST OF

THE ESTATE BEFORE THE ECONOMIC INTEREST OF THE PROFESSIONAL;
AND,

L. THE "POINTS OF REFERENCE", AS SET FORTH ABOVE.

5. NON-TRADITIONAL COMPENSATION ARRANGEMENTS.

A. FLAT-FEE: UNLESS OTHERWISE PROHIBITED BY LAW OR RULE, FLAT-FEE COMPENSATION IS PERMISSIBLE, AND MAY INCLUDE ALL OR PART OF AN ENGAGEMENT, IF THE PREDICTABILITY OF COSTS IS ENHANCED AND IF THE ECONOMIC INTERESTS OF THE PROFESSIONAL ARE THEREBY BETTER ALIGNED WITH THE ESTATE.

THE BASIS FOR ANY FLAT FEE COMPENSATION SHALL BE DISCLOSED IN ADVANCE, IN WRITING, SPECIFYING IN DETAIL THE SERVICES INCLUDED IN ANY FLAT-FEE, THE UNITS OF EACH SERVICE, AND THE USUAL HOURLY RATE FOR SUCH SERVICES. THE ACTUAL DELIVERY OF SERVICES INCLUDED WITH THE FLAT FEE SHALL BE DOCUMENTED.

B. CONTINGENT FEE: UNLESS OTHERWISE PROHIBITED BY LAW OR RULE, NOTHING IN THESE GUIDELINES SHALL PROHIBIT A CONTINGENT FEE ENGAGEMENT WITH AN ATTORNEY, PROPERLY EXECUTED IN WRITING, E.G. REPRESENTATION ON A PERSONAL INJURY CLAIM.

EXHIBIT A FOR 2011

STATEWIDE FEE GUIDELINES FOR ASSESSING THE REASONABLENESS OF FIDUCIARY, GUARDIAN AD
LITEM,
AND ATTORNEY COMPENSATION IN TITLE 14 PROCEEDINGS

This Exhibit shall be periodically updated by the Administrative Office of the Courts, and an updated Exhibit A may be downloaded at www.azcourts.az.gov/...

	Hourly Professional Compensation Range				
	Minimum	Median	Average	Maximum	
Attorney					
Licensed Fiduciary					
Guardian <i>ad Litem</i>					

PLEASE NOTE: THE HOURLY RATES REPORTED IN EXHIBIT A ARE COMPILED BY THE ADMINISTRATIVE OFFICE OF THE COURTS AS A POINT OF REFERENCE ON ESTIMATED CURRENT MARKET RATES AMONG PROFESSIONALS BASED UPON CURRENTLY AVAILABLE INFORMATION. THESE RATES ARE NON-BINDING ON THE PARTIES, PROFESSIONALS OR THE COURT, BUT ARE INFORMATIVE AND PERSUASIVE AS AN INITIAL POINT OF REFERENCE IN DETERMINING REASONABLE COMPENSATION. ACTUAL COMPENSATION RATES WILL VARY BASED UPON OTHER FACTORS INCLUDING THE EXPERIENCE OF THE PROFESSIONAL, GEOGRAPHIC AREA OF SERVICE, AND RESOURCES OF THE FIRM.

TO DO, FORMS 3 & 4:

ADD A PARAGRAPH (AS MODIFIED TO MATCH STATUTE) TO THE FORM 3 (ORDER TO CONSERVATOR) AND FORM 4 (ORDER TO GUARDIAN AND CONSERVATOR):

UNLESS OTHERWISE ORDERED BY THE COURT, FOLLOWING A WRITTEN REQUEST NOT MORE THAN ONCE EVERY THIRTY DAYS, A CONSERVATOR SHALL ALLOW A PERSON WHO IS ENTITLED TO NOTICE OF THE CONSERVATOR'S ANNUAL ACCOUNT PURSUANT TO SECTION 14-5419, SUBSECTION C, TO VIEW OR RECEIVE A COPY OF THE CONSERVATOR'S BILLING STATEMENTS, THE BILLING STATEMENTS OF THE CONSERVATOR'S ATTORNEY, AND/OR OTHER FINANCIAL RECORDS OF THE PROTECTED PERSON; THE CONSERVATOR MAY REDACT CONFIDENTIAL DATA, SUCH AS SOCIAL SECURITY AND ACCOUNT NUMBERS . THE CONSERVATOR SHALL COMPLY AS SOON AS PRACTICABLE BUT NO LATER THAN THIRTY DAYS AFTER RECEIVING THE WRITTEN REQUEST. THE REQUESTING PERSON MUST PAY REASONABLE COPYING COSTS AND SHALL NOT RELEASE THE RECORDS TO ANYONE OTHER THAN THE PERSON'S OWN ATTORNEY. COMPLIANCE WITH THIS REQUEST SHALL BE BILLABLE TIME FOR THE CONSERVATOR.]